

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7540

Petition of Vermont Department of Public Service for an)
investigation and for an order directing Telephone)
Operating Company of Vermont LLC, d/b/a FairPoint)
Communications, to show cause why its Certificate of)
Public Good should not be revoked)

Order entered: 10/29/2009

ORDER RE: SCOPE OF INVESTIGATION

I. INTRODUCTION

In the Procedural Order issued on October 1, 2009, the Public Service Board ("Board") scheduled a workshop for October 6, 2009, to address the scope of issues for this proceeding. The Board also required each party to file its proposed scope of issues in advance of that workshop. Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint" or the "Company"), the Vermont Department of Public Service ("Department") and National Mobile Communications, Inc. d/b/a Sovernet Communications ("Sovernet"), filed comments. We convened the workshop as scheduled at which the parties' proposals were discussed. Although the parties appeared to reach consensus on the issues that this proceeding should address, and the Board did not consider it necessary to issue a further order on the scope of this investigation, FairPoint requested that the Board issue an order confirming the scope.

In this Order, the Board grants FairPoint's request to outline the scope of issues in this investigation.

We are mindful that FairPoint has filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Today's Order is being issued at FairPoint's request, does not take any action adverse to FairPoint, and simply memorializes what was agreed to at the October 6 workshop.

II. PARTIES' COMMENTS

FairPoint proposes that the investigation would cover five broad areas: (1) performance of systems; (2) company operations; (3) escalations of consumer complaints; (4) financial capability; and (5) organization and management. The systems-performance issues would address not only the existing status, but also encompass a detailed assessment of short and long-term solutions and enhancements. Operational issues would encompass installations, flow-through ordering, billing, and provision of services to competitive local exchange carriers ("CLECs").

Sovernet observes that conditions in the Board's February 15, 2008, Order in Docket 7270 (in which we approved FairPoint's acquisition of landline assets of Verizon New England Inc., d/b/a Verizon Vermont ("Verizon") in Vermont, subject to specified conditions) require that FairPoint provide services to CLECs that are at least equivalent to those it provides to itself and that Verizon provided to CLECs prior to consummation of the acquisition on March 30, 2008. Sovernet recommends that the scope of issues encompass whether FairPoint is meeting this standard. FairPoint agreed to address Sovernet's concerns in its testimony.

The Department recommends that we structure the proceeding around the same criteria that the Board has employed in determining whether to issue a certificate of public good ("CPG") to an entity. The Department observes that the Board has typically grouped these criteria into five principal areas:

1. Whether the company is technically competent;
2. Whether the company is financially sound;
3. Whether the company will act as a fair partner in business transactions with the citizens of Vermont;
4. Whether the company will create efficiencies that will benefit customers; and
5. Whether the transaction will cause impairment of or obstruct competition.

The Department recommends that the most urgent issues to be considered and evaluated at this time are whether FairPoint is technically competent and whether it is financially sound.

The Department enumerates a list of specific areas and performance issues that it recommends that the investigation encompass. Within the area of technical competence, these include service quality, billing and handling, repairs, complaint handling, provisioning,

communications, systems issues, and managerial competence. The Department also proposes that as part of reviewing FairPoint's financial soundness, the Board should examine FairPoint's sustainability, profitability and capital-investment rate.

The Department's proposed scope identifies not only the broad issues, but also specific matters within each category that it seeks to examine. For example, the Department identifies ten specific concerns with the performance of FairPoint's billing systems. The Department enumerated similar detailed concerns about several other issue areas. In this Order establishing the scope of the proceeding, we have not reiterated each of the Department's specific concerns, but have focused on the broader areas that should be investigated. Nonetheless, the specific issues identified by the Department within each category are included within the scope of this proceeding, as noted below.

At the status conference, FairPoint agreed to the scope recommended by the Department.

III. SCOPE OF PROCEEDING

In the October 1 Order, we explained that we were proceeding with this investigation under both 30 V.S.A. §§ 209 and 231. In particular, we stated that we interpreted this investigation as specifically addressing the question of whether we should modify or revoke the CPG issued to FairPoint.

The Board has previously explained the legal standard for such a modification or revocation. In particular, in our investigation into Citizens Utilities, Dockets 5841/5859, we observed that under 30 V.S.A. § 231(a), we may amend or revoke a utility's CPG "[f]or good cause, after opportunity for hearing." We stated that this was a case-specific inquiry, with the inquiry informed by consideration of the following factors:

- the factors that the Board has previously articulated for issuance of a utility franchise;
- the utility's compliance with the fundamental statutory obligation to furnish reasonably adequate service to the public;
- the utility's compliance with the law, with the Board stating that "[f]ailure to abide by applicable laws, especially laws that are designed to protect the public,

would be strong evidence that a public utility is failing in its obligation to promote the public good."¹

The Board also stated that this was not an exhaustive list of factors that may be relevant in determining whether to revoke a utility's franchise.

The scope of this investigation will be based upon these standards, as well as those issues identified by the Department in its filing and agreed to by FairPoint at the workshop; parties may present evidence on any of these matters. In particular, we expect parties to address the issue areas identified below. As the Department commented, in the past the Board has structured its investigation into the issuance of a CPG around five general considerations. Within these factors, the Board has used 15 specific criteria; we employed this framework in Docket 7270 in which we approved FairPoint's acquisition of Verizon. The issue areas we have identified below based upon the parties' comments are grouped according to this framework.

A. Technical Competence/Fair Partner/Furnishment of Reasonably Adequate Service

The Board's standards both for issuance of a CPG and for examination into possible modification of a CPG focus on a company's ability to provide quality service to consumers. Certainly, over the last eight months, questions have been raised about FairPoint's ability to provide such service consistently and reliably. The parties have identified particular aspects of FairPoint's services. Here, we adopt the parties' recommendations on the appropriate scope of the inquiry. This includes the following areas:

1. Service Quality (retail). Parties should address:
 - a. Compliance with retail service quality standards.
 - b. Performance of billing systems. In particular, FairPoint should explain the steps it has taken to comprehensively determine that all billing errors have been identified and corrected (including both the residential and commercial markets).

1. *Investigation into Citizens Utilities Company*, Dockets 5841/5859, Order of 6/16/97 at 281 (quoting from *Investigation into Duxbury Water*, Docket No. 5817, Order of 9/4/96 at 4-5).

In addition, FairPoint should specifically examine the ten issues identified by the Department in its filing.

- c. Provisioning of customers. Following the cutover from Verizon's systems to FairPoint's, FairPoint began to experience delays in providing service. The investigation will consider whether FairPoint is providing services to customers in a timely manner following a request. For example, are normal provisioning intervals now being met? Is FairPoint meeting commitments it makes concerning the timing? Is there a backlog of service orders? Within this issue area, we expect to examine the specific issues raised by the Department, such as the apparent difficulties many seasonal customers have experienced with restoration of service.
- d. Repair. The concerns raised about FairPoint's provisioning of service also apply to its response to customer trouble reports, including those involving loss of service. The investigation will include examination of whether FairPoint is providing timely repair service. The specific issues identified by the Department, such as FairPoint's timeliness and ability to actually provide the customer the service it promised, should also be addressed.
- e. Other service quality issues. The Department identifies other specific instances where customers' services have been adversely affected, such as unanticipated changes to an account or telephone number. These matters are appropriately included within the scope of inquiry.

2. Customer Service/Complaint Handling.

The Department raises several concerns about the manner in which FairPoint has responded to inquiries from wholesale and retail customers. In addition, the Department contends that FairPoint has not accurately and completely responded to consumer complaints raised on their behalf by the Department. Both of these issues relate to the question of whether FairPoint's customer service is consistent with its obligations. The investigation will examine

whether FairPoint is providing accurate, timely, and complete information to its customers and to the Department.

3. Quality of the Facilities.

FairPoint has openly acknowledged that many of its service problems stem from the systems that FairPoint and CapGemini designed and that FairPoint installed in northern New England and to which it cut over at the end of January. FairPoint's own recommended list of issues encompasses the status of its systems. We expect parties to fully examine the status of the systems, but more importantly, their capability to provide effective services at reasonable cost. In addition, to the extent the systems are not now capable of providing retail and wholesale services that are at least equal to those previously offered by Verizon, parties should identify what steps are necessary to correct the deficiencies and whether an appropriate action plan exists to achieve this result.

4. Competence of Management.

Since the problems associated with converting to FairPoint's systems arose in February, FairPoint has been unable to fully correct the problems and return its services to the performance level that existed prior to cutover. In addition, as FairPoint itself has acknowledged, it has developed multiple plans to address the problems and then failed to accomplish the goal of returning its performance to pre-acquisition levels. As the Department suggests, the repeated starts and stops raise questions about whether FairPoint has the managerial capability to fix the outstanding problems and operate the Company consistent with its obligations under Vermont law and the CPG. The investigation necessarily will examine FairPoint's management competence. This should include the specific matters raised by the Department, such as FairPoint's ability to identify problems, produce and manage an effective response to those problems, provide accurate and timely information to consumers and regulators, and, more broadly, provide the level of service that Vermont consumers have the right to expect.

B. Financial Soundness

We accept the Department's recommendations concerning the issues related to financial soundness that will be included in this proceeding. Most broadly, does FairPoint have the financial capacity to comply with the commitments that are encompassed within its CPG while continuing to provide high-quality telecommunications services? The Department suggests that FairPoint is not financially viable over the long-term; FairPoint must respond to this allegation.

The Department also suggests that FairPoint's financial constraints raise questions about the Company's ability to make appropriate capital investments. Not only must FairPoint maintain existing capital obligations, but it has committed to additional projects that will require additional capital — namely the build-out of broadband, the removal of dual poles, and compliance with service quality standards that will doubtless require an increase in capital expenditures in some areas. This proceeding will consider whether FairPoint can meet these obligations.

C. Impairment of Competition

The Board's Order approving FairPoint's acquisition of Verizon included a number of conditions designed to ensure that FairPoint continued to offer services to its competitors in a manner that promotes and facilitates a fair competitive environment. The Order contains a number of specific conditions, but it also requires FairPoint to provide service that is at least equal to that provided by Verizon. The scope of the proceeding will include consideration of whether FairPoint is meeting all of the conditions in its CPG related to telecommunications competition and treatment of competitive local exchange carriers. In particular, FairPoint should address its compliance with wholesale service quality standards (including the Performance Assurance Plan) and whether its provision of service to CLECs is at least as good as that provided by Verizon. In addition, at the workshop, FairPoint agreed to address specific issues identified by Sovernet and other CLECs;² these issues fall within the scope.

2. Neither FairPoint nor Sovernet identified the specific issues. Representatives of the CLECs and FairPoint have met regularly since the cutover to identify issues requiring resolution. Sovernet asked, and FairPoint agreed, that the outstanding issues would be included. We accept that resolution as these fall within the broader question of whether
(continued...)

D. Compliance with the Law

Our prior examination of possible modification or revocation of a CPG has also considered whether the utility was complying with its legal obligations, both statutory and regulatory. To make such a determination, it is appropriate to consider whether FairPoint is meeting the obligations under the Board's February 15, 2008, Order and set out in the CPG. As part of FairPoint's response to this issue, FairPoint should specifically address whether it is meeting its broadband expansion milestones, the mandate to remove dual poles, and the duties under the Performance Enhancement Plan.

SO ORDERED.

Dated at Montpelier, Vermont, this 29th day of October, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
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)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 29, 2009

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

2. (...continued)
FairPoint is meeting its obligation to provide at least an equivalent level of services to CLECs that Verizon had.